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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. 3:93-002-HRH
)	
Plaintiff,)	<u>UNITED STATES' PARTIAL</u>
)	<u>NON-OPPOSITION TO</u>
vs.)	<u>DEFENDANT'S MOTION TO</u>
)	<u>REDUCE THE TERM OF</u>
AARON HICKS,)	<u>IMPRISONMENT UNDER 18</u>
)	<u>U.S.C. § 3582(c)(2)</u>
Defendants.)	
_____)	

The United States, by and through counsel, hereby responds to the defendant's motion to reduce the term of imprisonment under 18 U.S.C. § 3582(c)(2). After a thorough and detailed review of the defendant's file, the government is not opposed to the defendant's motion to the extent that he is eligible for a reduction in the term of imprisonment. Because the court determined

at the time of sentencing that the base offense level was subject to a two-level enhancement pursuant to § 2D1.1(b)(1) of the United States Sentencing Guidelines for the grouped Counts 1, 4, 5, 13, 14, 16, 23, and 28 of the First Superseding Indictment, the government agrees that it is within the court's discretion to reduce the defendant's term of imprisonment. The government further agrees that the appropriate Guideline range is 292 months to 365 months imprisonment for these counts rather than the range contemplated by the court at sentencing, or 360 months to life imprisonment.

The defendant's current sentence, however, falls within this new, adjusted range of imprisonment. The government does not agree to recommend to the court that the defendant's sentence be reduced to the low end of the Guideline range. Pursuant to U.S.C. § 3582(c)(2), the court may reduce the term of imprisonment, "after considering the factors set forth in section 3553(a)." Following a trial, the sentencing court understood that the defendant managed and supervised a complex organization in the business of distributing crack cocaine from various residences. Here, the defendant has not offered adequate justification for the court to reduce the defendant's term of imprisonment.

Finally, the defendant requests in a footnote that, in the event the court grants his motion, he have the opportunity to brief "the effect of United States v.

Booker . . . on the calculation of his new sentence.”¹ The government opposes the defendant’s request. Section 3582(c) contemplates instances where the court has the discretion to modify a previously imposed term of imprisonment. The remedy for the instant motion is not a re-sentencing, which would implicate Booker issues.

RESPECTFULLY SUBMITTED this 27th day of January, 2006, in
Anchorage, Alaska.

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I declare under penalty of perjury that a true and correct
copy of the foregoing was sent electronically to Lissa W. Shook
and Robert K. Stewart on January 27, 2006

s/David A. Nebett
Office of the U.S. Attorney

¹ Clerk’s Docket No. 931 at 12, n.6.